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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/469,494 01/04/00 DAVIS

L 076565-0115

EXAMINER

QM12/1127

CHRISTOPHER M TUROSKI

HIRSCH, F

FOLEY & LARDNER

ART UNIT

PAPER NUMBER

FIRSTAR CENTER

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3732

MILWAUKEE WI 53202-5367

DATE MAILED:

11/27/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/469,494

Applicant(s)
Davis et al

Examiner
Paul Hirsch

Group Art Unit
3732



☒ Responsive to communication(s) filed on Oct 31, 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-38 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-38 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Reissue Applications

1. The reissue oath/declaration filed with this application is defective because the error which is relied upon to support the reissue application is not an error upon which a reissue can be based.

See 37 CFR 1.175(a)(1) and MPEP § 1414.

A. The statement within the substitute Declaration relative to the error relied on is merely a statement of the rejection as previously stated in the prior Office Action relative to claim 20, i.e., a statement of the preamble of the rejection relative to claim 20 to the merits and/or prosecution of the Reissue. Accordingly, this is not an error relative to the Applicant's claiming more or less than he had a right to claim in the context of what is required within a Declaration and relative to the allowed claims of Patent 5,842,486.

B. A statement that the rejection of claim 20 under 35 USC 102 (a,e) is in error does not constitute an error that a reissue can be based.

2. Claims 1-38 are rejected as being based upon a defective reissue Declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

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The nature of the defect(s) in the declaration is set forth in the discussion above in this Office action.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 6-14 and 23-36 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

A. The subject matter within claims 6, 8, 12 and 23 pertaining to the sealing locations including planar interfaces is not disclosed within the specification as to what these surfaces are and/or where they are specifically located. While planar surfaces are shown as to their existence, the only sealing function disclosed is relative to bulges 38, 54, groove 38, rim 36, peripheral wall 33 and peripheral edge 33. Accordingly, lines 2-5 of claim 6, lines 4-5 of claim 8 (“in generally planar contact to form the air-tight seal”), lines 2-4 of claim 12, lines 6-9 of claim 14, and lines 6-7 and 10 of claim 23 constitute and/or include New Matter.

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5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 14-20 and 25-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- A. The phrase “at least one sealing surface comprises a bulge” within claim 25 contradicts the structure of claim 23 wherein the sealing surface is recited as being planar.
- B. Claim 35, line 2, “a generally planar portion of the channel” appears as a double recitation of claim 23, lines 6-7.
- C. Claim 36 lacks proper antecedence for “the sealing portions” and “the sealing surfaces”.
- D. Claim 14, lines 6-9, the phrase “the rim being received in the groove in at least partial planar engagement with the bulge” is indefinite in that a bulge does not have a plane and thus accordingly cannot be in partial planar engagement with a groove. Thus, it is not clear what Applicant is defining in terms of structure.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

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(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

8. Claims 1, 8, 21-23, 35 and 37-38 are rejected under 35 U.S.C. 102(a,e) as being anticipated by Sheffler et al. Sheffler et al teaches apparatus as recited by the claims including a grooved annular system by which an hermetic seal is accomplished between a base piece and a cover piece relative to figure 16. The seal is accomplished at or by a plurality of locations by the cooperation of peripheral parts 170, 178, 168 and the bulge 182 more clearly shown in Figure 18. Also, note relative blunt prong 134, 178 as shown by figures 14 and 16-20 relative to claims 37-38. The base of Sheffler et al may consist of 122, 116 and the cover as elements 128, 130. In regard to claim 35 note relative planar portions between 170, 178 of figure 16 for example.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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10. Claims 2-7, 14-15, 18-20 and 24-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sheffler et al. Modification of Figures 15-18 of Scheffler to be integral and include corresponding peripheral wall/groove sealing structure would be obvious from Figures 1-2 and 12 (teaching integral construction of the cove and a base). Dimensioning of the walls where no new or unexpected result occurs as well as shape of the container are considered matters of obvious design well known to the art. In regard to claim 5, outer body 116, 128 and the flexible nature of Sheffler et al allows for the hermetic seal regardless of content and is the full equivalent of the functional result as recited by the claim. In regard to claim 25 the specific cooperation and location of the rim and sealing channel relative to the cover and/or base is considered a matter of obvious design choice. The term cover is considered a relative term. In regard to claim 30 the term interface is applied to any structure which maintains the parts in position other than the open and closing of the seal such as the wedging action of Sheffler et al and/or gravity prior to the snap closing.

11. Claims 9-13 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sheffler et al in view of Contreras Sr.(4454889). The snap action of Sheffler et al of the hinge would inherently include a sound upon opening or closing but would also be obvious in view of Contreras Sr. which teaches snap action upon closure of the seal.

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12. Claims 33-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sheffler et al in view of Seidler et al. Adaptation of Sheffler et al to include a housing would be obvious from Seidler et al for refill capability.

Response to Arguments

13. Applicant's arguments with respect to claims 1-38 have been fully considered but are moot in view of the new ground(s) of rejection and believed answered within the above rejection to the extent that they apply to the current claims 1-38.

Conclusion

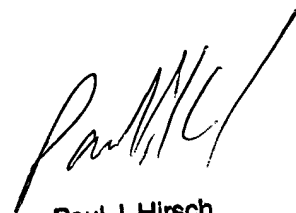
14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Primary Examiner Paul Hirsch whose telephone number is (703) 308-2697.



Paul J. Hirsch
Primary Examiner

pjh

November 17, 2000